receivers. The sale and purchase agreement dated 14 May 1984 treated the equipment as chattel, not as land or fixtures and, in the Sixth Schedule, gave notice of the retention of title in the appellants. It was therefore argued that the receivers were estopped from asserting, as against the appellants, that title did not remain in the appellants. This was expressed, as in argument before the learned judge, that the receivers cannot approbate (assert title to act as the company's agents) and reprobate (assert power as such agents to do what the company and its agents as such could not do) or simply as an example of estoppel by convention (the convention obliging the receivers to adhere to a state of facts which they have declared to be assumed as true for the purposes of a particular transaction).

The learned judge had no difficulty in rejecting the argument. He said:

"The equipment had become part of the land long ago, at least since October 1982 when the factory became operational and production began. Therefore, the plaintiff had lost their title to the equipment long before the sale and what they had lost they could not and did not regain. It follows that in whatever manner the defendants treated the equipment in the sale in May 1984 could not possibly revive the plaintiff's title to the equipment."

In argument before us, the appellants sought to contend that as the equipment was sold as machinery and not part of the land, it was sold as if severed from the land. We are unable to accept this submission. In the first place, physical severance is clearly necessary in order for a fixture to revert to the character of chattel. It is common ground that no such physical severance took place. The most that can be said is that there could, in law, be some form of "notional severance", for which there is no authority in support. In our opinion, such a proposition is clearly untenable. In *Bain* v. *Brand*,[9] Lord Chelmsford said: "As the personal character of the chattel ceases when it is fixed to the freehold, it can never be revived as long as it continues so annexed." In the second place, as the learned judge found, the equipment had clearly become a fixture long before the sale, at least sometime in October 1982 when production in the factory began. By the time of the sale, therefore, the appellants' title to the equipment had been entirely extinguished when it turned into land and, accordingly, the receivers were free to deal with the property of the company (which included the equipment) in accordance with the debentures. The form of documentation employed by the receivers to dispose of the property of the company could not, therefore, possibly "revive" the appellants' title to the equipment in any way. In the third place, it cannot be assumed that the receivers intended to deal with the equipment in a way which would be outside their powers and contrary to law. The receivers' intention must have been to enforce the bank's security – not to convert fixtures into chattels. There is clearly no evidential basis for any assertion to the contrary. Indeed, the receivers' intention must have been to pass title to the fixtures by the assignment dated 28 June 1984 (which is expressly made by the bank in the exercise of its statutory power of sale as mortgagee) by which the title to the fixtures passed and could only have passed. This was always intended, as the sale of the equipment by the sale and purchase agreement was to be completed by the assignment (see, for example, clause 5(a) of the sale and purchase agreement).

For all these reasons, we would dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *Cooma Lau & Loh & M. Karthigesu; Allen & Gledhill.*

TONG BEE FINANCE CO. LTD. v. SUNLAND MONSTREAL TRADING (S) PTE. LTD.

[C.A. (Lai Kew Chai & Thean JJ. & Chan Sek Keong J.C.) 12 February 1988]

[Singapore – Civil Appeal No. 31 of 1986]

Hire Purchase – Dispute as to facts – Allegation that hire purchase agreement was void – "Dealer" – Definition of – "Transaction" – Meaning of – Hire Purchase Act (Cap. 125, 1985 Ed.), ss. 2, 30, 31 & 33.

The appellants agreed to let to the respondents a truck under a hire purchase agreement. The respondents did not pay the monthly instalments and therefore the appellants repossessed the vehicle and sold it to a third party. The appellants then claimed liquidated damages from the respondents.

The respondents resisted the claim. They contended:

(i) that the transaction was not one of hire purchase but a loan and the hire purchase agreement was a cloak to conceal the true substance of the transaction of a loan and was a bill of sale given by way of security;

(ii) that the appellants had contravened section 33(b) of the Hire Purchase Act (Cap. 125, 1985 Ed.) in that

they imposed on the respondents a greater liability than that stated in the hire purchase agreement by falsely stating the purchase price of the vehicle as $18,000 instead of $14,000; and

(iii) that the appellants had also contravened section 30(1) of the Act in that the deposit of $5,000 expressed to be payable in the hire purchase agreement was fictitious and was never paid by the respondents to the appellants at any time.

The learned District Judge gave judgment in favour of the appellants. The respondents appealed to the High Court. The appeal was allowed. The appellants then appealed to the Court of Appeal.

Held, allowing the appeal: (1) on the first issue, the learned District Judge had found that the transaction was a hire purchase and the hire purchase agreement was valid. On the evidence, the learned District Judge was justified in making the finding as he did;

(2) this court can find no ground for disturbing the finding of the learned District Judge that there was no contravention of section 33(b) of the Act;

(3) there had also been no breach of section 30(1) of the Act by the appellants.

CIVIL APPEAL.

Cheong Yuen Hee for the appellants.

Eapon Carlose for the respondents.

Cur. Adv. Vult.

Thean J. (delivering the judgment of the court): The appellants are a finance company. By an agreement dated 29 June 1983 ("the hire purchase agreement") made between the appellants and the respondents, the appellants agreed to let to the respondents an Isuzu SPZ450 dump truck ("the vehicle"), and one Wee Yong Soon ("Wee") joined in the execution of the hire purchase agreement as the guarantor of the respondents. Under the hire purchase agreement, the amounts expressed to be payable, so far as material, are as follows:

Total cash price of the vehicle	– $18,000
Term charges	– $ 2,145
Total amount payable including a deposit of $5,000 to be paid	– $20,145
Less:	
Deposit to be paid	– $ 5,000
Balance amount	$15,145

and the respondents agreed to pay this balance amount by 17 monthly instalments on the 29th day of every month commencing from July 1983. The respondents did not pay any of the monthly instalments, and the appellants accordingly repossessed the vehicle on 16 September 1983, after having given the requisite notice under the Hire Purchase Act (Cap. 125, 1985 Ed.) ("the Act"), and subsequently sold it for a sum of $8,000. The appellants then initiated proceedings against the respondents and Wee in the District Court for recovery of a sum of $7,821.90 as liquidated damages. Judgment in default of appearance was entered against Wee; the respondents, however, resisted the claim.

Before the District Court, there were disputes on the facts. The case of the appellants was this. On 29 June 1983, Chong Sher Shen (DW 1), the managing director of the respondents, and Wee representing Benly Construction & Transport Co. Pte. Ltd. ("Benly"), went to the appellants' office and saw Soon Thuan Chong (PW 2), the assistant manager of the appellants. DW1 told PW 2 that the respondents wanted to buy the vehicle from Benly for $18,000 and required financing in the sum of $13,000, by way of hire purchase of the vehicle, and that the respondents would themselves pay the sum of $5,000 to Benly. PW 2 required a guarantor of the respondents to the hire purchase transaction and Wee agreed to be the guarantor. PW 2 also required Benly to furnish a document evidencing the sale of the vehicle by Benly to the appellants, which Wee agreed. The necessary documents were prepared at the appellants' office, including the hire purchase agreement and the sale invoice of Benly, and were signed by the parties concerned. Thereafter, the sum of $13,000 was paid by the appellants to Benly. According to PW 2, the deposit of $5,000 was to be paid by the respondents to Benly, and DW 1 and Wee told him that "they had settled it themselves".

The case of the respondents, however, was this. The respondents purchased the vehicle from Benly for $14,000, of which a deposit of $1,000 was paid to Benly through Wee. As the respondents did not have sufficient funds to pay the balance, Wee informed DW 1 that the appellants were a finance company and would be prepared to provide loans. Both DW 1 and Wee then went to the office of the appellants and saw PW 2. DW 1 intimated to PW 2 that the respondents required a loan of $13,000 to buy the vehicle. PW 2 "took out a set of documents" and required DW 1 to sign, which the latter did; included in the set of documents was the hire purchase agreement which was signed as a formality. Wee joined in signing the hire purchase agreement as the guarantor of the respondents and also signed the sale invoice of Benly. Both DW 1

and Wee said that only $1,000 was paid to Wee who received it on behalf of Benly. DW 1 said that the respondents wanted only a loan of $13,000, but the value of the vehicle was "jacked up" to $18,000 and $5,000 was stated in the hire purchase agreement as deposit payable; but no such deposit was ever paid.

On the basis of these facts, the respondents raised the following defences:

(i) that the transaction was not one of hire purchase but a loan, and the hire purchase agreement was a cloak to conceal the true substance of the transaction of a loan and was a bill of sale given by way of security;

(ii) that the appellants had contravened section 33(b) of the Act, in that they imposed on the respondents a greater liability than that stated in the hire purchase agreement by falsely stating the purchase price of the vehicle as $18,000, instead of $14,000; and

(iii) that the appellants had also contravened section 30(1) of the Act, in that the deposit of $5,000 expressed to be payable in the hire purchase agreement was fictitious and was never paid by the respondents to the appellants at any time.

The respondents therefore alleged that the hire purchase agreement was void and counterclaimed against the appellants for damages for conversion of the vehicle.

The learned District Judge held that the transaction was a hire purchase; that Benly sold the vehicle to the appellants who then let it on hire purchase to the respondents, and that the hire purchase agreement was valid. He found as a fact that the purchase price of the vehicle was $18,000, of which $5,000 as deposit had been paid, and it was paid to Benly. He therefore held that the appellants had not contravened section 33(b) of the Act as the declaration of the purchase price at $18,000 was not false. He also held that the appellants had not contravened section 30(1) of the Act, as the deposit of $5,000 had been paid to Benly and he found that Benly was a dealer within the meaning of the Act.

Against that decision, the respondents appealed to the High Court, which allowed the appeal and set aside the judgment of the District Court. The appeal was allowed on two grounds. First, the High Court held that there was no dispute that the respondents had bought the vehicle from Benly, and this finding was based on the pleading delivered by the appellants, namely, paragraph 2 of the reply. Secondly, the High Court held that the sum of $5,000 as deposit was paid by the respondents out of the sum of $18,000 lent to them by the appellants under the hire purchase agreement; therefore section 30(1) of the Act had been contravened and, in consequence, the hire purchase agreement was void.

Against the decision of the High Court, this appeal is now brought. Before us, three issues were raised and argued: (i) whether the transaction in question was one of hire purchase or was a loan by the appellants to the respondents, (ii) whether the appellants had contravened section 33(b) of the Act, and (iii) whether the appellants had contravened section 30(1) of the Act. On the first issue, the learned District Judge had found that the transaction was a hire purchase and that the hire purchase agreement was valid. He said:

> "It was plain on the evidence that a valid agreement under the Hire Purchase Act was concluded and executed between the plaintiffs and the defendants, with Wee Yong Soon (DW 2) being the guarantor. This agreement (exhibits AB 2 to AB 5) had all the attributes of a hire purchase agreement as envisaged by the Hire Purchase Act, Chapter 192. Wee, as a trader or dealer, instead of giving credit to the defendants (his customers), sold the dump-truck to the plaintiffs (the finance company) and thus obtained the sale price in cash. The plaintiffs then hired the goods to the defendants and sought to derive their profits and expenses from the difference between the cash price, less deposit paid to the dealer, and the total of the instalments to be received from the defendants."

This finding was based obviously on his evaluation of the evidence given by PW 2 , DW 1 and Wee. He rejected the evidence of DW 1 that the respondents bought the vehicle from Benly for $14,000, of which a deposit of $1,000 was paid "sometime on 28 June 1983", and the evidence of Wee which corroborated the evidence of DW 1 on this point. The learned District Judge accepted the evidence of PW 2 and his finding was also supported by: (i) the sale invoice dated 29 June 1983, which showed that the vehicle was sold to the appellants and that a deposit of $5,000 had been paid, (ii) the board resolution of the respondents, and (iii) the hire purchase agreement. Clearly, on the evidence, the learned District Judge was justified in making the finding, as he did, and we agree with him.

On the second issue, the learned District Judge found that the declaration of purchase

price of the vehicle at $18,000 as contained in the hire purchase agreement was not false and that the deposit of $5,000 towards the purchase of the vehicle had been paid by the respondents to Benly through Wee. He therefore came to the conclusion that there was no contravention of section 33(b) of the Act. Here again, there was evidence before him, which he accepted, to support his conclusion and we can find no ground for disturbing his finding.

We now turn to the last issue. Under section 30(1) of the Act, an owner who lets his goods on hire purchase is required to obtain from the proposed hirer deposit in cash or in goods, or partly in cash and partly in goods, to the value of not less than 10% of the cash price of the goods comprised in the agreement. That section provides as follows:

"30. (1) Where the minimum amount of the deposit in respect of any goods or class of goods is not prescribed, an owner who enters into a hire purchase agreement without having first obtained from the proposed hirer thereunder a deposit in cash or in goods, or partly in cash and partly in goods, to a value not less than 10% of the cash price of the goods comprised in the agreement, the agreement shall be void."

(There is a grammatical error in this subsection, but the meaning is clear.) The requirement of section 30(1) is modified by subsection (2) of section 31, which provides as follows:

"31. (2) The provisions of this Part shall be deemed to have been complied with by the owner if a deposit in accordance with those provisions has been obtained by the dealer or an agent or servant of the owner."

In this case, the learned District Judge found that the deposit of $5,000, as provided in the hire purchase agreement, had been paid by the respondents to Benly. This finding, as we said, was justified on the evidence before him. The question which now arises is whether Benly was at the material time a dealer within the meaning of the Act and if it was, then section 31(2) of the Act applies and section 30(1) had not been contravened. This question therefore turns on the true construction of the provision of section 2(1) of the Act, which defines a "dealer" as follows:

"a person, not being the hirer or the owner or a servant of the owner, by whom or on whose behalf negotiations leading to the making of a hire purchase agreement with the owner were carried out or by whom or on whose behalf the transaction leading to a hire purchase agreement with the owner was arranged."

As can be seen, the definition has two limbs: (i) "a person ... by whom or on whose behalf negotiations leading to the making of a hire purchase agreement with the owner were carried out", or, in the alternative, (ii) a person "by whom or on whose behalf the transaction leading to a hire purchase agreement with the owner was arranged". The learned District Judge found that Benly was a dealer. He said:

"In this case, Wee Yong Soon (DW 2), on behalf of Benly Construction, introduced the defendants' representative Chong (DW 1) to the plaintiffs for the purpose of obtaining a loan. He arranged the hire purchase transaction and was intimately involved in the negotiations leading to the execution of the hire purchase agreement (exhibits AB 2 to AB 5). The deposit of $5,000 paid by the defendants passed directly from the defendants, as hirers, to Wee Yong Soon who was the representative of the dealer or trader (Benly Construction).

For this reason, Wee Yong Soon and his firm of Benly Construction were "dealers" within the meaning of that term in section 2(1) of the Hire Purchase Act. Hence, the requirement as to the taking of a minimum deposit from the defendants, as hirers, was complied with and the plaintiffs have not violated section 30(1) of the Hire Purchase Act."

It seems to us that the learned District Judge held that Benly was a dealer within the meaning of both limbs of the definition. In so far as the first limb is concerned, the finding was not warranted. There was no evidence that the respondents were "intimately involved in the negotiations leading to the execution of the hire purchase agreement". In our opinion, Benly was not a dealer falling within the first limb of the definition.

The next question then is whether Benly was a dealer falling within the second limb of the definition. This question turns on the meaning of the word "transaction". The word "transaction", in its ordinary sense, means a deal or bargain or piece of business. In this case, there were two such transactions involved, *i.e.* (i) the transaction of sale and purchase of the vehicle by Benly to the appellants, and (ii) the transaction of hire purchase of the vehicle between the appellants and the respondents. Having regard to the words "was arranged", at the end of the sentence in the definition, we have difficulty in accepting that in this case the sale and purchase transaction of the vehicle was "the transaction leading to the hire purchase agreement" with the owner, the appellants. It is inapt to say that the sale and purchase transaction was arranged by Benly when it was made or entered into by Benly with the appellants. The other transaction, the hire purchase of the vehicle, could fall within the second limb, and that turns on whether Benly, through Wee, did arrange that

transaction. The learned District Judge found that it did. Again, on the evidence before him, he was justified in making this finding. First, Benly's representative, Wee, in effect, introduced the appellants to the respondents and Wee went with DW 1 to meet PW 2. In this own words, he accompanied the respondents to see the appellants to assist the respondents to get a loan. Secondly, Benly, through Wee, sold the vehicle to the appellants with a view to the latter letting it on hire purchase to the respondents and received the deposit of $5,000 from the respondents. He also arranged for the respondents to take over the insurance of the vehicle. It is significant that Wee executed the hire purchase agreement as a guarantor of the respondents, though he did so in his personal capacity and not as a representative of Benly. We are of the view that Benly, by these acts of Wee, did arrange the hire purchase transaction leading to the hire purchase agreement.

Accordingly, there had been no breach by the appellants of section 30(1) of the Act. This appeal therefore succeeds. We set aside the order made by the High Court and restore the order made by the learned District Judge. The costs of this appeal and the appeal to the High Court are to be paid by the respondents. There will be the usual consequential order for the refund to the appellants of the deposit paid into court as security for the costs of the respondents.

Appeal allowed.

Solicitors: *Y.H. Cheong; Ganesan Carlose & Partners.*

UNITED OVERSEAS BANK LIMITED v. YAUW ENTERPRISE LTD.

[O.C.J. (Chua J.) 1 March 1988]

[Singapore – Originating Summons No. 1204 of 1987]

Land Law – Sale and purchase of units in building – Shortfall in floor area – Claim for compensation for shortfall.

The plaintiffs agreed to purchase certain units of a building from the defendants. The floor area to be purchased included the mezzanine floor which was to be sold at $300 per sq. ft. Certain sums of money were also paid towards the purchase price. Thereafter, a shortfall in the actual floor area of the mezzanine floor area was discovered and the plaintiffs claimed compensation by way of an abatement of the purchase price together with interest.

Held: the defendants were entitled to an adjustment and the purchase price of the mezzanine floor at $300 per sq. ft. should be increased by 571.88 sq. ft. amounting to $171,564.00.

ORIGINATING SUMMONS.

Cheo Chai Beng for the plaintiffs.

Lai Lay Kim for the defendants.

Cur. Adv. Vult.

Chua J.: In 1979 by letter dated 20 November, the plaintiffs agreed to grant credit facilities amounting to $2.9 million to the defendants to be utilized to finance the construction of the proposed development of a six-storey office/shop building known as GSM Building ("the building"). Under paragraph 7 of the said letter, as one of the conditions for the granting of the credit facilities, the plaintiffs were to be given first priority of choice over the purchase of premises in the building to be used as bank premises at an agreed maximum selling price.

Negotiations were conducted between the plaintiffs and the defendants regarding the purchase by the plaintiffs of premises in the building. The plaintiffs had first negotiated to purchase three units in the building with a total area of 4,004.28 sq. ft. on the ground floor at the price of $500 per sq. ft. and 3,195.52 sq. ft. on the mezzanine floor at the price of $300 per sq. ft. Later, the plaintiffs requested for more accommodation space to meet the requirements of the banking hall.

Subsequently by letter dated 27 September 1980, the defendants informed the plaintiffs that the exact floor area of the premises to be purchased by the plaintiffs was as follows:

"Ground Floor	2,200	sq. ft. at $500 psf =	$1,100,000.00
Additional Ground Floor	1,825.20	sq. ft. at $570 psf =	$1,040,364.00
Sub-Total	4,025.20	sq. ft. =	$2,140,364.00
Mezzanine Floor	3,195.52	sq. ft. at $300 psf =	958,656.00
Total	7,220.72	sq. ft. =	$3,099,020.00"

The letter also requested for payment of $154,951 being 5% of the purchase price for the premises as booking fee.